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## BEFORE THE ARIZONA CORPORATI

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DOCKET CONTROLArizona Corporation Commission  
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SEP 09 2015

DOCKETED BY **DOCKET NO. W-03510A-13-0397****REPLY IN SUPPORT OF LP5K'S  
MOTION TO DISMISS****ORIGINAL**

IN THE MATTER OF THE APPLICATION  
OF CIRCLE CITY WATER COMPANY  
L.L.C. FOR APPROVAL TO DELETE  
PORTIONS OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND TO  
DELETE THE REQUIREMENT TO FILE A  
RATE CASE PURSUANT TO DECISION  
NO. 68246.

In accordance with A.A.C. R14-3-109 (C) and the procedural order dated August 17, 2015, Lake Pleasant 5000, L.L.C. ("LP5K") hereby files a Reply in Support of its Motion to Dismiss the Application of Circle City Water Company ("CCWC") for Approval to Delete Portions of its Certificate of Convenience and Necessity ("CC&N").

**I. INTRODUCTION**

On August 10, 2015, LP5K filed a Motion to Dismiss the Application filed by CCWC in the above captioned docket. On August 11, 2015, a procedural conference was held that set out the deadlines for filing a response and reply to the Motion to Dismiss as well as setting the dates for filing testimony and establishing a hearing date. In accordance with the procedural order, CCWC filed its Response on August 25, 2015. In its Response, CCWC raised several issues which can not and should not be addressed in this filing. Additionally, CCWC's propensity to quote sentences and figures without any citation makes it difficult at best to respond to the allegations contained in its Response. LP5K will not attempt to address all of the assertions contained in CCWC's response, and the failure to address an assertion shall not be construed as an admission.

1           **II.       A NEED FOR SERVICE STILL EXISTS**

2           As discussed in the original Motion, there is still a need for service. Set out in greater detail  
3 in Staff's testimony as well as LP5K's testimony, there is no doubt that a need for water service  
4 exists. Additionally, LP5K is still committed to spending fifty-five million dollars to ensure  
5 CCWC has the infrastructure necessary to fulfill that need.<sup>1</sup> It is almost beyond belief that a  
6 utility would actively work to delete a portion of its CC&N that would ultimately serve over 8500  
7 connections. While this development has taken longer than expected, like most other  
8 developments in America in recent years, LP5K should be commended for continuing to honor its  
9 commitments to CCWC and the various governmental agencies regarding the development of this  
10 project. All too often over the last few years, developers who could not handle their projects  
11 walked away leaving utilities and others to pick up the pieces. LP5K is taking the exact opposite  
12 approach to this project but must endure additional expenses defending itself from a public  
13 service corporation that not only is going to receive millions of dollars in contributed  
14 infrastructure but also has been fully reimbursed for any expenses it incurred to expand the  
15 CC&N initially.<sup>2</sup>

16           If CCWC is successful in its application, irreparable harm will befall LP5K. Additionally,  
17 CCWC ignoring its duty to serve could have long lasting effects on the regulatory environment  
18 we live in. LP5K has a vested right to receive service from CCWC based upon the CC&N that  
19 has been issued. Allowing CCWC to remove the Development after LP5K has relied upon the  
20 CC&N causes irreparable harm to the property owner.

21           **III.       ACTIONS BY CCWC**

22           CCWC has taken some stances that are unique for regulated entities. As noted in Staff's  
23 testimony, CCWC relies upon the idea that the CC&N was null and void because CCWC did not  
24 meet certain conditions of the original order that required filing certain documents which CCWC  
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26 <sup>1</sup> Water Facilities Agreement. Section II, ¶ 1-3.

27 <sup>2</sup> The issue of CCWC sending an invoice and cashing a check for over \$67,000 was fully briefed in the Motion to Dismiss. Without devoting too  
28 much time to the issue, it should be noted that CCWC's discussion about how long it took LP5K to pay for the expenses leaves out the pertinent  
fact that CCWC didn't send an invoice until 2013. Once an invoice was received with backup material, LP5K paid it expeditiously.

1 possessed but failed to file.<sup>3</sup> Thankfully, this is a tactic unique to CCWC and not one commonly  
2 employed by the regulated community in Arizona. It is not something that should be rewarded.

3 In its Response, CCWC makes several accusations and statements that are not keeping with  
4 the required decorum a regulated entity should show in pleadings before the regulator. While this  
5 pleading will not address some of the more frivolous ones, it is important to note that in both its  
6 response and its testimony, CCWC is calling into question its status as a “fit and proper” entity.  
7 “Fit and proper” is a term of art that is paramount to utility regulation in our state and not one to  
8 be used lightly. While the ACC has called into question various utilities being “fit and proper”,  
9 this might be the first case that a utility has questioned its own status. If the ACC believes that  
10 CCWC is not “fit and proper”, there are tools available to the ACC to make that determination.  
11 The above captioned docket is not the proper place.

#### 12 IV. CONDITIONS ON CCWC FOR THEIR NEXT RATE CASE

13 In its response, CCWC presented a diatribe regarding the positive impact contained in  
14 Decision No. 68246.<sup>4</sup> While difficult to decipher, it seems CCWC would have the Commission  
15 believe that some action of LP5K prevented a rate case from being filed. It is important to note  
16 that the last time CCWC received new rates was January 1, 1988 in Decision No. 55839<sup>5</sup>. Since  
17 CCWC has not filed for new rates in almost thirty years, it is impossible to believe that LP5K  
18 caused any harm to CCWC on this matter. As stated in the original Motion, LP5K is in  
19 agreement with Staff that this condition be removed.

#### 20 V. CONCLUSION

21 Based upon the findings of Staff contained in their Direct Testimony and the reasons  
22 discussed above and the Motion to Dismiss, LP5K respectfully request the Commission dismiss  
23 the application as it relates to the deletion of the CC&N and eliminate the requirement that  
24 CCWC show a positive impact on existing customers from the installation of new water facilities.

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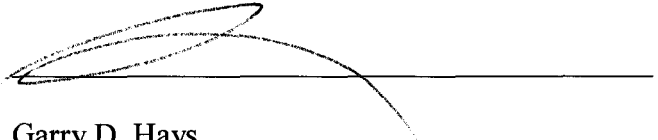
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<sup>3</sup> Page 5 of Staff's testimony 2<sup>nd</sup> paragraph.

27 <sup>4</sup> Reply pg 6 lines 5-15.

28 <sup>5</sup> See Application for extension filed in Docket No. W-03510A-05-0146 paragraph 10.

1 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of September 2015

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